

### **REMARKS**

Claims 1-34 are currently pending in the application. Applicants have canceled claims 2-4, 7-9, 12-14, 17-19, 22-24, 27-29 and 32-34, and amend claims 1 and 5. Applicants request reconsideration of the application in light of the following remarks.

#### **Objections to Claims**

The Examiner has objected to claim 1 under 37 CFR 1.75(i) indicating that the claim does not clearly point out each step of the method. Applicant has amended claim 1 as suggested by the Examiner, to clearly point out each step of the method. Applicant respectfully requests that the objection to claim 1 be withdrawn.

#### **Rejections under 35 U.S.C. §112**

Claims 11-20 stand rejected by the Examiner under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. Applicant respectfully traverses this rejection and requests reconsideration of the claims.

Claims 12-14, and 17 -19 have been canceled. The rejection of claims 12-14 and 17-19 is, therefore, obviated.

Claims 11 and 15 each include, “the specific gravity of each component of the construction waste, which is used for determining the reference specific gravity of the liquid, is based on surface-dry density measured in a state where each of the components contained a sufficient amount of water held therein.” Applicant describes specifically what is meant by surface-dry density in page 5, line 11 through page 6, line 25 of the Specification, wherein the Applicant refers to Table 1. Particularly, surface-dry density is described in the paragraph beginning on page 6, line 6:

The surface-dry state refers to a state where the internal cracks and surface grooves of the aggregate are filled with water but the surface of the aggregate is not wet. The surface-dry state is used as the reference state, particularly in the design of concrete mix. The surface-dry density means the density in this surface-dry state.

The specific gravity is then generated using this surface dry density instead of just the density of the component. This measurement would result in a different specific gravity. Clearly, the Specification provides an indication what is being used as the density of the material, and the claims are not considered indefinite. Accordingly, Applicant respectfully requests that the rejection of claims 11-20 under 35 U.S.C. § 112 be withdrawn.

### **Rejections under 35 U.S.C. §102**

A claim is anticipated only if each and every element as set forth in the claim is found, either expressly or inherently described, in a single prior art reference. *Verdegaal Brothers v. Union Oil Co. of California*, 2 USPQ2d 1051, 1053 (Fed. Cir. 1987). The identical invention must be shown in as complete detail as is contained in the claim. *Richardson v. Suzuki Motor Co.*, 9 USPQ2d 1913, 1920 (Fed. Cir. 1989).

Claim 1 was rejected under 35 U.S.C. § 102(b) as being anticipated by Fiedlschuster et al (U.S. Patent No. 6,213,306, hereinafter "Fiedlschuster"). Applicants respectfully traverse this rejection and request reconsideration of the claims.

As amended, claim 1, now includes the limitations of claims 4 and 33. The Examiner has indicated in the office action that Fiedlschuster does not disclose the limitations of

claims 4 and 33. Accordingly, Fiedlschuster does not disclose or anticipate every element of claim 1 and is therefore allowable.

Applicant respectfully requests that the anticipation rejection of claim 1 be withdrawn.

### **Rejections under 35 U.S.C. §103**

To establish a *prima facie* case of obviousness under 35 U.S.C. §103, three basic criteria must be met. First, there must be some suggestion or motivation, either in the references themselves or in the knowledge generally available to one of ordinary skill in the art, to modify the reference or to combine reference teachings. Second, there must be a reasonable expectation of success. Third, the cited prior art reference must teach or suggest all of the claim limitations. Furthermore, the suggestion to make the claimed combination and the reasonable expectation of success must both be found in the prior art, and not based upon the Applicants' disclosure. A failure to meet any one of these criteria is a failure to establish a *prima facie* case of obviousness. MPEP §2143.

### **Claims**

Claims 2-25 were rejected under 35 U.S.C. § 103(a) as being unpatentable over Fiedlschuster (U.S. Patent No. 6,213,306, hereinafter "Fiedlschuster"), in view of Jepsen (U.S. Patent No. 3,578,162, hereinafter "Jepsen") and Olivier (U.S. Patent No. 5,373,946, hereinafter "Olivier"). Applicant respectfully traverses this rejection and requests reconsideration of the claims.

Claims 2-4, 7-9, 12-14, 17-19, and 22-24 have been canceled. The rejection of claims 2-4, 7-9, 12-14, 17-19, and 22-24 is, therefore, obviated.

Claims 5, 6, 10, 11, 15, 16, 20, 21 and 25 depend from independent claim 1. Accordingly, claims 5, 6, 10, 11, 15, 16, 20, 21 and 25 are allowable for, among other reasons, depending from an allowable base claim.

Further, the Examiner indicated in paragraph 15 of the Office Action that Fiedlschuster, Jepson and Olivier did not disclose specific gravity of each component of the construction waste, which is used for determining the reference specific gravity of the liquid, is based on surface-dry density measured in a state where each of the components contained a sufficient amount of water held therein as required in claims 11 and 15. The Examiner incorrectly argues that specific gravity is calculated using the density of the material divided by the density of water, and that this is the calculation used by Applicant. Rather, claims 11 and 15 require the density of the material to be replaced with the density of the component based on surface-dry density measured in a state where each of the components contained a sufficient amount of water held therein. Surface-dry density is described in the paragraph beginning on page 6, line 6:

The surface-dry state refers to a state where the internal cracks and surface grooves of the aggregate are filled with water but the surface of the aggregate is not wet. The surface-dry state is used as the reference state, particularly in the design of concrete mix. The surface-dry density means the density in this surface-dry state.

The specific gravity is then generated using this surface-dry density instead of just the density of the component as the Examiner has argued is obvious. This measurement would result in a different specific gravity than that indicated by the Examiner, and is therefore not obvious in light of Fiedlschuster, Jepson and Olivier. Claims 11 and 15 are therefore not obvious in view of the cited references.

Applicant respectfully requests that the obviousness rejections of claims 2-25 be withdrawn.

Claims 26-32 were rejected under 35 U.S.C. § 103(a) as being unpatentable over Fiedlschuster, in view of Jepsen and Olivier, and further in view of Smith et al. (U.S. Patent No. 4,265,737, hereinafter “Smith”). Applicant respectfully traverses this rejection and requests reconsideration of the claims.

Claims 27-29 and 32 have been canceled. The rejection of claims 27-29 and 32 is, therefore, obviated.

Claims 26, 30 and 31 depend from claims that depend from independent claim 1. Accordingly, claims 26, 30 and 31 are allowable for, among other reasons, depending from an allowable base claim.

Claims 33 and 34 were rejected under 35 U.S.C. § 103(a) as being unpatentable over Fiedlschuster, in view of Jepsen and Olivier, and further in view of Tse (U.S. Patent Pub. 2007/0084765, hereinafter “Tse”). Applicant respectfully traverses this rejection and requests reconsideration of the claims.

Applicant wishes to point out to the Examiner that Tse has a filing date of October 13, 2005 and was not published until April 19, 2007. Applicant’s application has a foreign priority of September 24, 2004, which is more than a year prior to the filing of Tse and more than two years prior to the publication of Tse. Accordingly, Tse is not proper prior art under 35 U.S.C. 103(a). The Examiner indicates in paragraph 21 of the Office Action that Fiedlschuster, Jepsen and Olivier does not disclose the steps of claims 33 and 34. The Examiner relies on Tse to reject claims 33 and 34. Since Tse is not prior art with regard to

Applicant's application, claims 33 and 34 cannot be considered obvious in view of Fiedlschuster, Jepsen, Olivier and Tse.

Even if Tse were to be considered prior art, Tse does not teach the limitations of claims 33 and 34. Tse teaches a device that pierces garbage bags and collects nonrigid, elongate objects and powder. Tse does not disclose stirring the cylindrical precipitation tank by rotation using a driving unit such that the medium dispersed in the tank is maintained as a stable suspension as required by claims 33 and 34. Tse does not even disclose the ability to stir a medium in the tank to maintain a stable suspension. Tse includes a cylindrical screen that rotates and sifts powder from garbage. This type of cylindrical screen would not accomplish the stirring claimed by applicant. Accordingly, it would not have been obvious to combine Tse with Fiedlschuster, Jepsen and Olivier.

Additionally, Tse does not disclose gathering components floating on the suspension by use of guide plates. Tse does not disclose components floating in the suspension and further does not disclose guide plates that push the floating components floating on the suspension.

Therefore, even if Tse would be considered prior art, each element in claims 33 and 34 are not taught by the combination of Fiedlschuster, Jepsen, Olivier and Tse. Additionally, there is no motivation to combine the references. Claims 33 and 34 are therefore allowable.

While claims 33 and 34 have been canceled resulting in the obviousness rejection being obviated, claim 1 has been amended to include the limitations of claim 33. Accordingly, claim 1 would be allowable for the same reasons as presented above with regard to claim 33.

Appl. No.: 10/567,768  
Amdt. dated February 6, 2009  
Reply of Office action of November 7, 2008

Docket No. MAC-11036

Applicant respectfully requests that the obviousness rejections of claims 33 and 34 be withdrawn.

**Regarding Doctrine of Equivalents**

Applicants hereby declare that any amendments herein that are not specifically made for the purpose of patentability are made for other purposes, such as clarification, and that no such changes shall be construed as limiting the scope of the claims or the application of the Doctrine of Equivalents.

**CONCLUSION**

Applicant respectfully requests that a timely Notice of Allowance be issued in this case.

If any fees, including extension of time fees or additional claims fees, are due as a result of this response, please charge Deposit Account No. 19-0513. This authorization is intended to act as a constructive petition for an extension of time, should an extension of time be needed as a result of this response. The examiner is invited to telephone the undersigned if this would in any way advance the prosecution of this case.

Respectfully submitted,

Date: February 6, 2009

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